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BEFORE THE
SURFACE TRANSPORTATION BOARD

ROCK RIVER RAILROAD, INC. –
ACQUISITION AND OPERATION
EXEMPTION – RAIL LINE OF
RENEW ENERGY, LLC AT
JEFFERSON, WI

) 226552
) Finance Docket No. 35016
)
)

MARK K. SMITH – CONTINUANCE
IN CONTROL EXEMPTION – ROCK
RIVER RAILROAD, INC.

) 226553
) Finance Docket No. 35017
)

JOINT PETITION FOR REVOCATION OF EXEMPTION

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Dated: March 8, 2010

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TRANSPORTATION BOARD**

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RIVER RAILROAD, INC.)	

JOINT PETITION FOR REVOCATION OF EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), Rock River Railroad, Inc. (“RRR”), Union Pacific Railroad Company (“UP”), and Valero Renewable Fuels Company, LLC (“Valero”), hereby jointly petition for revocation of an exemption from 49 U.S.C. § 10901 for RRR to become a common carrier over railroad facilities owned by Valero as successor-in-interest to Renew Energy, LLC (“RE”), relating to an ethanol plant in Jefferson, WI. The exemption at issue was the subject of a notice in Finance Docket No. 35016 served April 20, 2007, a decision extending the effective date in No. 35016 served May 4, 2007, and a decision denying UP’s petition for stay served May 10, 2007.¹

¹ Finance Docket No. 35017 involves a related exemption for Mark K. Smith to continue in control of RRR when (and if) RRR becomes a Class III rail carrier. Revocation of the RRR acquisition and operation exemption will moot any need for the continuance in control exemption, and the Board may find it appropriate to revoke that exemption as well.

BACKGROUND

The exemption at issue relates to RRR's previously proposed operation of railroad facilities at the Jefferson, WI ethanol plant that RE owned and operated at the time. In Nos. 35016 and 35017, RRR and Mark K. Smith submitted a "Reply in Opposition to Petition to Stay Exemptions" dated May 4, 2007, that included a Verified Statement of Jeff White, the Chief Executive Officer of RE at the time, stating that RE "has agreed in principle to convey" the plant's trackage to RRR. Notwithstanding Mr. White's statement, RRR never acquired any interest in or authorization to utilize the trackage, and RRR has never provided any railroad service -- be it common carrier, non-common carrier, intra-plant or inter-plant switching, or otherwise -- to or at the facility. In other words, the exemption authority in No. 35016, which is permissive only, has never been consummated or exercised. Accordingly, the facilities have never become common carrier facilities.

Since the time the exemption was sought, RE has entered Chapter 11 bankruptcy. In early February 2010, Valero acquired the plant, including the railroad facilities, out of bankruptcy. Valero and UP have been actively engaged in discussions regarding arrangements under which rail service to the ethanol plant may be resumed. The RRR's exemption may prove to be an impediment to the resumption of rail service into the facility, especially as the resumption of service will likely require significant investment to rehabilitate the lines. For its part, RRR no longer has any intent or plan to acquire or operate over the trackage or provide service to the plant, whether as a common carrier, inter-plant switching carrier, intra-plant switching carrier, or otherwise.

In sum, RRR, UP, and Valero all wish to have RRR's exemption revoked, so that UP and Valero can pursue other arrangements.

REQUEST FOR REVOCATION OF EXEMPTION

Accordingly, RRR, UP, and Valero all jointly request that the Board revoke the exemption. Ample good cause exists for granting their request. They are the only parties affected, and they all request the revocation. The fact is that RRR never acquired any interest in the relevant facilities, nor did RRR ever commence operations over those facilities. Nor will RRR do so in the future. RRR thus never became an actual common carrier, and the facilities at issue have never become common carrier facilities. However, the continued existence of the exemption serves as a barrier to the pursuit of arrangements that will further the national rail transportation policy including, *inter alia*, for "competition and the demand for services to establish reasonable rates for transportation by rail," "to minimize the need for Federal regulatory control over the rail transportation system," "to reduce regulatory barriers to entry into and exit from the industry," and "to encourage and promote energy conservation." 49 U.S.C. § 10101(1), (2), (7), and (14).

Therefore, in accordance with 49 U.S.C. § 10502(d), Board action to revoke this unexercised, undesired, and unneeded exemption for acquisition and operation is necessary to carry out the transportation policy of 49 U.S.C. § 10101.

CONCLUSION

Therefore, for the reasons stated above, the Board should revoke the exemption and confirm that the Board does not have jurisdiction over the involved trackage, without costs to any party.

Respectfully submitted,

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Dated: March 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Joint Petition for Revocation to be served by email and first class mail, postage prepaid, this 8th day of March, 2010, on the following, the parties of record in STB Finance Docket Nos. 35016 and 35017.

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